

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FIDELITAD, INC.,

Plaintiff,

v.

INSITU, INC.,

Defendant.

NO: 13-CV-3128-TOR

PROTECTIVE ORDER

BEFORE THE COURT is the parties' Stipulated Motion for Protective Order (ECF No. 32). The motion is **GRANTED**.

WHEREAS, Plaintiff Fidelitad, Inc. ("Plaintiff" or "Fidelitad") and Defendant Insitu, Inc. ("Defendant" or "Insitu") (collectively "the Parties") contemplate that discovery in the above-captioned action (the "Action") will involve the exchange of information, and the production of documents and other materials by the Parties, which may contain information in the nature of personal information, alleged trade secrets, export-controlled information or documents, or

1 information otherwise alleged to be of a confidential, regulated, or proprietary
2 nature, as described more fully below; and

3 WHEREAS, in order to establish procedures that would, among other things,
4 protect the Parties from public disclosure of such personal information, alleged
5 trade secrets, export-controlled information or documents, or information
6 otherwise alleged to be of a confidential, regulated, or proprietary nature that might
7 result in damage to the Parties or to a third-party, the Parties agree to limit the
8 disclosure and dissemination of personal information, alleged trade secrets, export-
9 controlled information or documents, or information otherwise alleged to be of a
10 confidential, regulated, or proprietary nature that are in the possession, custody, or
11 control of one of the Parties or a third-party, while at the same time allowing the
12 Parties to obtain discovery thereof under the terms and conditions set forth below;
13 and

14 WHEREAS, a protective order will also expedite the flow of discovery
15 materials, protect the integrity of allegedly confidential or regulated information,
16 promote the prompt resolution of disputes over confidentiality, and facilitate the
17 preservation of material worthy of protection; and

18 WHEREAS, the Parties hereto have stipulated to the terms and conditions of
19 this Agreed Protective Order (the “Protective Order”) through their undersigned
20 counsel;

1 **IT IS HEREBY ORDERED:**

2 1. Scope and Application of Protective Order. This Protective Order
3 shall govern any document, information or other material that is designated as
4 containing “Confidential Information,” “Export Controlled Information,” or
5 “Attorney’s Eyes Only Information” as defined herein, and is produced in
6 connection with this litigation by any person or entity (the “producing Party”),
7 whether in response to a discovery request, subpoena or otherwise, to any other
8 person or entity (the “receiving Party”) regardless of whether the person or entity
9 producing or receiving the “Confidential Information,” “Export Controlled
10 Information,” or “Attorney’s Eyes Only Information” is a Party to this litigation.
11 The Protective Order does not address disclosure or discovery of classified
12 information. The Parties agree to address appropriate procedures for the treatment
13 of Classified Information as necessary.

14 2. Definitions.

15 2.1. Confidential Information. “Confidential Information” shall
16 mean and include, without limitation, any information that contains allegedly
17 private, confidential and proprietary information, including but not limited to
18 personally identifiable information; confidential medical or employment
19 information; alleged trade secrets; allegedly non-public commercial, financial,
20 pricing, budgeting and/or accounting information; allegedly non-public

1 information about existing and potential customers; marketing studies,
2 performance and projections; allegedly non-public business strategies, decisions
3 and/or negotiations; personnel compensation, evaluations and other employment
4 information; and allegedly confidential proprietary information about affiliates,
5 parents, subsidiaries and third-parties with whom the Parties to this action have or
6 have had business relationships. A protective order is warranted, and there is good
7 cause for such treatment for these categories of information, to the extent that such
8 information allegedly derives value from not being publicly known, and public
9 disclosure of such information would allegedly lead to serious and unwarranted
10 injury.

11 2.2 Export Controlled Information. “Export Controlled
12 Information” shall mean information that is subject to the requirements of the
13 Export Administration Regulations (“EAR”), 15 C.F.R. §§ 730, *et seq.*, and/or the
14 International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. §§ 120, *et seq.*
15 Such information may be contained in documents that Defendants furnish in this
16 case related to dual use commodities, technology, or software, or defense articles.
17 A protective order is warranted, and there is good cause for special treatment of
18 these categories of information because federal law subjects such information to
19 specific rules related to designation, use, access, and disclosure, and imposes civil
20 and criminal penalties for violations.

1 2.3. Attorney's Eyes Only Information. "Attorney's Eyes Only
2 Information" shall mean Confidential Information (as that term is defined in
3 subparagraph 2.1 above) requiring heightened protection due to the following: that
4 such information constitutes highly proprietary financial, technical, or
5 commercially sensitive information that the producing Party maintains as highly
6 confidential in its business, that the producing Party believes, in good faith, would
7 cause significant harm to the competitive position of the producing Party if
8 disclosed to and known by the receiving Party, and which if disclosed to the
9 receiving Party is likely to provide that party with an unfair competitive advantage
10 with respect to the producing Party's goods and/or services.

11 2.4. Documents. As used herein, the term "documents" includes all
12 writings, records, files, drawings, graphs, charts, photographs, e-mails, video tapes,
13 audio tapes, compact discs, electronically stored information, electronic messages,
14 other data compilations from which information can be obtained and other tangible
15 things subject to production under the Federal Rules of Civil Procedure.

16 3. Initial Designation.

17 3.1. Good Faith Claims. Claims of confidentiality, export
18 controlled status, or attorney's eyes only status will be made only with respect to
19 documents, other tangible things, electronically stored information, or other
20 information that the asserting Party believes in good faith are within the definitions

1 set forth in subparagraphs 2.1-2.3 of this Protective Order. Objections to such
2 claims made pursuant to paragraph 5 shall also be made only in good faith.

3 3.2. Produced Documents. A Party producing documents that it
4 believes constitute or contain Confidential Information and/or Export Controlled
5 Information shall produce copies bearing a label that contains or includes language
6 substantially identical to the following:

7 **CONFIDENTIAL: Subject to Protective Order in Case No. 13-
8 CV-3128-TOR in the Eastern District of Washington**

9 or

10 **EXPORT CONTROLLED INFORMATION: Subject to Protective
11 Order in Case No. 13-CV-3128-TOR in the Eastern District of
12 Washington**

13 or

14 **CONFIDENTIAL AND EXPORT CONTROLLED
15 INFORMATION: Subject to Protective Order in Case No. 13-CV-
16 3128-TOR in the Eastern District of Washington**

17 or

18 **CONFIDENTIAL AND ATTORNEY'S EYES ONLY: Subject
19 to Protective Order in Case No. 13-CV-3128-TOR in the Eastern
20 District of Washington**

17 The label shall be affixed in a manner that does not obliterate or obscure the
18 contents of the copies. If any person or Party makes copies of documents
19 designated as containing Confidential, Export Controlled Information, or
20 Attorney's Eyes Only Information, the copying person or Party shall mark each

1 such copy as containing Confidential, Export Controlled Information, or
2 Attorney's Eyes Only Information in the same form as the notice on the original
3 document.

4 A Party producing documents that are stored on electronic, magnetic, optical
5 or other non-paper media, such as compact discs, DVD's, video tapes and audio
6 tapes (collectively, "data storage devices") shall designate the data storage device
7 as containing Confidential, Export Controlled Information, or Attorney's Eyes
8 Only Information by affixing a label or stamp to the data storage device in the
9 manner described above at the time copies of such data storage devices are
10 produced. If the receiving Party (or other persons or entities to whom disclosure is
11 authorized pursuant to subparagraphs 7.1 and 8.1) copies any data storage device
12 designated by the producing Party as containing Confidential, Export Controlled
13 Information, or Attorney's Eyes Only Information, the receiving Party or other
14 authorized person shall mark each such copy as containing Confidential, Export
15 Controlled Information, or Attorney's Eyes Only Information in the same form as
16 the notice on the original data storage device produced. If the receiving Party or
17 other authorized person prints out or otherwise makes copies of the documents or
18 information stored on such data storage device, the receiving Party or other
19 authorized person shall mark each page so copied with the label or stamp specified
20 in subparagraph 3.2.

1 The Parties are responsible for ensuring that Export Controlled Information
2 in their possession, custody or control is not made public. To prevent public
3 disclosure of Export Controlled Information, the Parties agree to follow the
4 procedure outlined in this paragraph before any document is (1) “exported,” as that
5 term is described in 15 C.F.R. § 730.5(c) or 22 C.F.R. § 120.17, or (2) otherwise
6 made public. All Export Controlled Information will be furnished by U.S. Persons
7 as defined by U.S. export control laws and regulations (hereafter “U.S. Persons”)
8 directly to counsel. Counsel hereby certifies that they and their personnel who
9 receive Export Controlled Information are and will be U.S. Persons, that they will
10 store all Export Controlled Information in a manner such that access is restricted
11 only to U.S. Persons, and that no Export Controlled Information will be physically
12 transported or transmitted outside U.S. territory. Before furnishing any document
13 (including any Export Controlled Information, any written discovery, and any
14 deposition transcript) to a non-U.S. Person, including by publicly filing the
15 document with the Court, counsel shall determine whether the document contains
16 Export Controlled Information. Counsel may seek assistance from counsel for
17 Defendant regarding Export Control designations, in which case counsel for
18 Defendant shall provide the requested determination within ten (10) business days,
19 or as soon as reasonably possible under the circumstances. If a particular
20 document contains Export Controlled Information, counsel for the Parties shall

1 take all steps necessary to ensure that the document or information is used and
2 accessed in accordance with the EAR, 15 C.F.R. §§ 730, *et seq.*, and/or ITAR, 22
3 C.F.R. §§ 120, *et seq.*, and disclosed only to U.S. Persons or as otherwise
4 permitted under U.S. law.

5 3.3. Interrogatory Answers. If a Party answering an interrogatory
6 believes that its answer contains Confidential, Export Controlled Information, or
7 Attorney's Eyes Only Information, it shall set forth that answer in a document that
8 is designated as Confidential, Export Controlled Information, or Attorney's Eyes
9 Only Information in the same manner as a produced document under subparagraph
10 3.2. The answers to interrogatories should make reference to the separately-
11 produced document containing the answer, but such document should not be
12 attached to the interrogatories.

13 3.4. Inspections of Documents. In the event a Party elects to
14 produce files and records for inspection and the requesting Party elects to inspect
15 them, no designation of Confidential, Export Controlled Information, or Attorney's
16 Eyes Only Information needs to be made in advance of the inspection, with the
17 understanding that the inspecting Party must be authorized to view such documents
18 under the EAR and/or ITAR. For purposes of such inspection, all material
19 produced shall be considered as Confidential or Export Controlled Information. If
20 particular documents or things to be inspected contain Attorney's Eyes Only

1 Information, the producing Party shall designate them as such before the
2 inspection. If the inspecting Party selects specified documents to be copied, the
3 producing Party shall designate Confidential, Export Controlled Information, or
4 Attorney's Eyes Only Information in accordance with subparagraph 3.2 at the time
5 the copies are produced.

6 3.5. Deposition Transcripts. No person except those permitted
7 access to Confidential and/or Export Controlled Information by this Order can
8 attend depositions to the extent that Confidential and/or Export Controlled
9 Information is disclosed. Within thirty days after the receipt of a deposition
10 transcript, a Party may inform the other Parties to the action if the transcript or
11 portions of it are designated as Confidential or Export Controlled Information.
12 Within ten days after the receipt of a deposition transcript, a Party may inform the
13 other Parties to the action if the transcripts or portions of it are designated as
14 Attorney's Eyes Only. Until ten days have elapsed, deposition transcripts in their
15 entirety are to be considered as Attorney's Eyes Only Information, and until 30
16 days have elapsed, deposition transcripts in their entirety are to be considered as
17 Confidential or Export Controlled Information. All persons and Parties in
18 possession of a copy of a designated deposition transcript shall appropriately mark
19 it as containing Confidential, Export Controlled Information, or Attorney's Eyes
20 Only Information.

1 3.6. Multipage Documents. A Party may designate all pages of an
2 integrated, multipage document, including a deposition transcript and interrogatory
3 answers, as Confidential, Export Controlled Information, or Attorney's Eyes Only
4 Information by placing the label specified in subparagraph 3.2 on the first page of
5 the document. If a Party wishes to designate only certain portions of an integrated,
6 multipage document as Confidential, Export Controlled Information, or Attorney's
7 Eyes Only Information, it should designate such portions immediately below the
8 label on the first page of the document and place the labels specified in
9 subparagraph 3.2 on each page of the document containing Confidential, Export
10 Controlled Information, or Attorney's Eyes Only Information.

11 4. Designations by Another Party.

12 4.1. Notification of Designation. If a Party other than the producing
13 Party believes that a producing Party has produced a document that contains or
14 constitutes Confidential, Export Controlled Information, or Attorney's Eyes Only
15 Information of the non-producing Party, the non-producing Party may designate
16 the document as Confidential, Export Controlled Information, or Attorney's Eyes
17 Only Information by so notifying all Parties in writing within 50 days of service of
18 the document (if Confidential or Export Controlled Information) or 20 days of
19 service of the document (if Attorney's Eyes Only Information).

1 4.2. Return of Documents. Whenever a Party other than the
2 producing Party designates a document produced by a producing Party as
3 Confidential, Export Controlled Information, or Attorney's Eyes Only Information
4 in accordance with subparagraph 4.1, each Party receiving the document shall
5 either add the Confidential, Export Controlled Information, or Attorney's Eyes
6 Only Information designation in accordance with subparagraph 3.2 or substitute a
7 copy of the document bearing such designation for each copy of the document
8 produced by the producing Party. Each Party shall destroy all undesignated copies
9 of the document or return those copies to the producing Party, at the direction of
10 the producing Party.

11 4.3. Nondisclosure. No Party shall disclose a produced document to
12 any person, other than the persons authorized to receive Confidential, Export
13 Controlled Information, or Attorney's Eyes Only Information under subparagraphs
14 7.1 and 8.1, until after the expiration of the 50 or 20 day designation period
15 specified in subparagraph 4.1. If during the 50 or 20-day designation period a
16 Party discloses an undesignated document to a person authorized to receive
17 Confidential, Export Controlled Information, or Attorney's Eyes Only Information
18 under subparagraphs 7.1 and 8.1, and that document is subsequently designated as
19 Confidential, Export Controlled Information, or Attorney's Eyes Only Information
20 in accordance with subparagraph 4.1, the disclosing Party shall cause all copies of

1 the document to be destroyed or returned to the producing Party, at the direction of
2 the producing Party. The Party may thereafter disclose a copy of the document
3 that has been marked as Confidential, Export Controlled Information, or
4 Attorney's Eyes Only Information by the designating Party, in accordance with
5 subparagraphs 3.2, 7.1, and 8.1.

6 5. Objections to Designations.

7 5.1. Notice of Objection. Any Party objecting to a designation of
8 Confidential, Export Controlled Information, or Attorney's Eyes Only Information,
9 including objections to portions of designations of multipage documents, shall
10 notify the designating Party and all other Parties of the objection in writing no later
11 than 60 days before the then-pending trial date (or, if a document is first produced
12 less than 60 days before the then-pending trial date, within half of the time
13 remaining before trial). This notice must specifically identify each document that
14 the objecting Party in good faith believes should not be designated as Confidential,
15 Export Controlled Information, or Attorney's Eyes Only Information and provide a
16 brief statement of the grounds for such belief. Failure to object shall not constitute
17 an admission that a document designated as Confidential Information contains
18 trade secret or otherwise proprietary information.

19 5.2. Conference Regarding Objection. The Parties with an interest
20 in the resolution of the objection shall confer within 10 days after the date of such

1 objection in an attempt to resolve their differences, unless the Parties agree to a
2 longer time. If the Parties are unable to resolve their differences with respect to a
3 Confidential or Export Control Information designation, the objecting Party shall
4 have 21 days after the conference concludes to file with the Court a motion to
5 remove the Confidential or Export Controlled Information designation. If the
6 parties are unable to resolve their differences with respect to an Attorney's Eyes
7 Only designation, the designating Party shall have 14 days after the conference
8 concludes to file with the Court a motion to protect the information from
9 disclosure. If an objection is served within 42 days of trial, the objecting Party
10 must file its motion to remove the Confidential or Export Controlled Information,
11 or the designating Party must file its motion to protect the Attorney's Eyes Only
12 designation within half of the remaining time before trial, and the meet-and-confer
13 period shall be shortened accordingly. If an objecting Party elects not to make
14 such a motion with respect to information designated Confidential or Export
15 Controlled Information to which an objection has been made, the objection shall be
16 deemed withdrawn. If a designating Party elects not to make a motion to protect
17 Attorney's Eyes Only Information to which an objection has been made, the
18 designation shall be deemed withdrawn.

19 5.3. Treatment after Objection Is Raised. All documents,
20 information and other materials initially designated as Confidential, Export

1 Controlled Information, and/or Attorney's Eyes Only Information shall be treated
2 as Confidential, Export Controlled Information, and/or Attorney's Eyes Only
3 Information in accordance with this Order unless and until the Court rules
4 otherwise. If the Court rules that a Confidential, Export Controlled Information, or
5 Attorney's Eyes Only Information designation should not be maintained as to a
6 particular document, the producing Party shall, upon written request by a Party,
7 provide that Party a copy of that document without the Confidential, Export
8 Controlled Information, or Attorney's Eyes Only Information designation
9 described in subparagraph 3.2.

10 6. Custody. All Confidential, Export Controlled Information, or
11 Attorney's Eyes Only Information and any and all copies, extracts and summaries
12 thereof, including memoranda relating thereto, shall be retained by the receiving
13 Party in the custody of counsel of record, or by persons to whom disclosure is
14 authorized under subparagraphs 7.1 and 8.1.

15 7. Handling of Confidential Information Prior to Trial.

16 7.1. Authorized Disclosures of Confidential Information.

17 Confidential Information shall be disclosed by the receiving Party only to the
18 following persons:

- 19 a. Counsel of record for the Parties in this litigation, including
20 their associates, clerks, paralegals, and secretarial personnel;

- b. Qualified persons taking testimony in this litigation involving such Confidential Information, and necessary stenographic, videotape and clerical personnel;
- c. Witnesses disclosed by the Parties in this Action;
- d. Experts and their staff who are consulted by counsel for a Party in this litigation;
- e. Parties to this litigation, limited to the named Party and, if that Party is a corporate entity, a limited number of employees of the corporate entity and its insurers;
- f. Designated in-house counsel and a limited number of assistants, administrative or otherwise;
- g. Outside vendors employed by counsel for copying, scanning and general handling of documents; and
- h. The Court hearing this litigation and the Court's staff, subject to the Court's processes for filing materials under seal.

With respect to Export Controlled Information, the persons in categories 7.1 and 7.2 must be U.S. Persons or otherwise permitted access to such information under U.S. law. Under Paragraphs 7.1(e) and (f), Defendant may disclose Confidential and Export Controlled Information to employees and in-house counsel of The Boeing Company to the extent necessary to investigate, prosecute, or defend the litigation. Under Paragraphs 7.1(e) and (f), Plaintiff may disclose Confidential and Export Controlled Information to the principals, employees, and attorneys of Fidelitad to the extent necessary to investigate, prosecute, or defend the litigation.

7.2 Authorized Disclosure of Attorney's Eyes Only Information.

Attorney's Eyes Only Information shall be disclosed by the receiving party only to the following persons:

- a. The Court and its personnel;
- b. Outside counsel for the Parties in this litigation (limited to the Parties' counsel of record), including their associates, clerks, paralegals, and secretarial personnel whose functions require access to Attorney's Eyes Only Information;
- c. Outside consultants with whom counsel deem it necessary to consult concerning technical, financial, or other aspects of this litigation to prepare for trial. An outside consultant's access to Attorney's Eyes Only Information shall be subject to the terms and limitations provided in sections 7.3-7.5, including execution of the written acknowledgement described in section 7.3.
- d. Principals or employees of the receiving Party only to the extent strictly necessary to investigate, prosecute, or defend this litigation and only under the following conditions: the Party wishing to disclose Attorney's Eyes Only Information to its principals and/or employees shall give written notice to the designating Party, identify the particular principal(s) or employee(s) to whom disclosure is sought, identify with particularity the documents to be disclosed, and identify the reason why such disclosure is necessary to investigate, prosecute, or defend this case. After the Parties confer as described in section 5.2, the information shall not be disclosed for 14 days, and if a motion is filed to protect the information, disclosure is not authorized unless and until the Court so orders.

Disclosures under sections 7.1 or 7.2 are authorized only to the extent necessary to investigate, prosecute, or defend the litigation.

1 7.3. Acknowledgement of Protective Order. Confidential

2 Information may not be disclosed to persons under subparagraphs 7.1(c) or (d) or
3 7.2(c) until the receiving Party has obtained a written acknowledgment from the
4 person receiving Confidential Information, in the form attached hereto, that he or
5 she has received a copy of this Order and has agreed to be bound by it. A Party
6 who discloses Confidential Information in accordance with subparagraphs 7.1(c) or
7 (d) or 7.2(c) shall retain the written acknowledgment from each person receiving
8 Confidential Information, shall maintain a list of all persons to whom a receiving
9 Party has disclosed Confidential Information, and shall furnish the written
10 acknowledgements and disclosure list to the Court for in camera review upon its
11 request or order. Furnishing the written acknowledgements and disclosure list to
12 the Court shall not constitute a waiver of the attorney work product or attorney-
13 client privilege.

14 7.4. Disclosure to Competitors. Before disclosing Confidential

15 Information or Attorney's Eyes Only Information to any authorized person who is
16 a competitor (or an employee of a competitor) of the designating Party, the Party
17 wishing to make such disclosure shall give at least 14 days notice in writing to the
18 designating Party, stating the names and addresses of the person(s) to whom the
19 disclosure will be made, and identifying with particularity the documents to be
20 disclosed. If, within the 14 day period, a motion is filed objecting to the proposed

1 disclosure, disclosure is not authorized unless and until the Court orders otherwise.
2 For purposes of this Protective Order, “competitor” is defined as any person or
3 entity that designs, manufactures, assembles or supplies products to or for the
4 market(s) served by the designating Party (“competitive products”) or components
5 of competitive products.

6 7.5. Unauthorized Disclosures. All persons receiving Confidential
7 Information or Attorney’s Eyes Only Information under the terms of this Order
8 agree to the jurisdiction of this Court for all matters arising from the improper
9 disclosure or use of such Confidential Information or Attorney’s Eyes Only
10 Information. If Confidential Information or Attorney’s Eyes Only Information is
11 disclosed to any person other than in the manner authorized by this Protective
12 Order, the Party or person responsible for the disclosure, and any other Party or
13 person who is subject to this Order and learns of such disclosure, shall immediately
14 bring such disclosure to the attention of the designating Party. Without prejudice
15 to other rights and remedies of the designating Party, the responsible Party or
16 person shall make every effort to obtain the return of the Confidential Information
17 and to prevent further disclosure on its own part or on the part of the person who
18 was the unauthorized recipient of such information.

19 7.6. Court Filings. All correspondence, pleadings, motions,
20 exhibits, transcripts or other papers filed with the Court containing or disclosing

1 Confidential Information or Attorney's Eyes Only Information shall be filed under
2 seal and shall be available for inspection only by the Court, the Court's staff,
3 counsel of record to the Parties and necessary employees of such counsel until
4 further order of Court, except as otherwise agreed by the Parties and any
5 consenting third-party that designated the documents, materials or information as
6 Confidential Information or Attorney's Eyes Only Information.

7 8. Handling of Export Controlled Information Prior to Trial

8 8.1. The Parties are responsible for ensuring that Export Controlled
9 Information in their possession, custody or control is used in accordance with the
10 EAR, 15 C.F.R. §§ 730, *et seq.*, and/or ITAR, 22 C.F.R. §§ 120, *et seq.* To prevent
11 unauthorized use of Export Controlled Information, the parties agree to follow the
12 procedure outlined in this paragraph.

13 i. Export Controlled Information disclosed in this action
14 will be used only for the purposes of this action.

15 ii. Counsel or other individuals authorized to received
16 Export Controlled Information will not disclose, export, or transfer, in any manner,
17 Export Controlled Information to any foreign person except as permitted by U.S.
18 law, and will not transport any such document outside of U.S. territory, without
19 prior written approval of the Bureau of Industry and Security, the United States
20

1 Department of State, or other appropriate U.S. government department or agency
2 except as permitted by U.S. law.

3 iii. Before disclosing any Export Controlled Information to
4 any person, counsel shall require such third person to execute a non-disclosure
5 agreement in the form attached hereto.

6 iv. The Parties will file under seal all documents that contain
7 Export Controlled Information.

8 8.2. Access to Export Controlled Information. The Parties and the
9 Court are responsible for ensuring that access to Export Controlled Information in
10 their possession, custody or control is restricted to authorized persons in
11 accordance with the EAR, 15 C.F.R. §§ 730, *et seq.*, and/or ITAR, 22 C.F.R. §§
12 120, *et seq.* To prevent unauthorized access of Export Controlled Information, the
13 Parties agree to follow the procedure outlined in this paragraph.

14 i. All documents containing Export Controlled Information
15 shall be placed in a secure file or room with access limited to those persons
16 identified in paragraphs 6 and 7 of this Protective Order who are U.S. Persons.

17 ii. If documents containing Export Controlled Information
18 are scanned and stored in a computer, access to such electronic files shall be
19 limited to those persons identified in subparagraph 7.1 of this Protective Order who
20 are U.S. Persons.

1 iii. In the event that counsel or another individual authorized
2 to received Export Controlled Information anticipates that Export Controlled
3 Information will be disclosed to the Court, including at any hearing or at trial, the
4 Parties agree to confer and, if necessary, to discuss with the Court the proper
5 safeguards to avoid an export violation.

6 9. Care in Storage. Any person in possession of Confidential, Export
7 Controlled Information, or Attorney's Eyes Only Information produced by another
8 Party shall exercise reasonable and appropriate care with regard to the storage,
9 custody, copying, and use of the Confidential, Export Controlled Information, or
10 Attorney's Eyes Only Information to ensure that the confidential and sensitive
11 nature of same is maintained.

12 10. Handling during Trial. Confidential, Export Controlled Information,
13 or Attorney's Eyes Only Information that is subject to this Order may be marked
14 and used as trial exhibits by either Party, subject to terms and conditions as
15 imposed by the Court upon application by any Party.

16 11. No Implied Waivers. The entry of this Protective Order shall not be
17 interpreted as a waiver of the right to object, under applicable law, to the
18 furnishing of information in response to discovery requests or to object to a
19 requested inspection of documents or facilities. Parties producing Confidential,
20 Export Controlled Information, or Attorney's Eyes Only Information in this

1 litigation are doing so only pursuant to the terms of this Order. Neither the
2 agreement to, or the taking of any action in accordance with the provisions of this
3 Protective Order, nor the failure to object thereto, shall be interpreted as a waiver
4 of any claim or position or defense in this action, or any other actions.

5 12. No Admission. Neither this Order nor the designation of any item as
6 Confidential, Export Controlled Information, or Attorney's Eyes Only Information
7 shall be construed as an admission that such material, or any testimony concerning
8 such material, would be admissible in evidence in this litigation or in any other
9 proceeding.

10 13. Inadvertent Failure to Designate as Confidential or Export Controlled.
11 The inadvertent and/or unintentional failure to designate any information as
12 Confidential or Export Controlled in accordance with this Protective Order shall
13 not be deemed a waiver, in whole or in part, of a Party's claim of confidentiality or
14 export control status. In the event of the disclosure of such information, the
15 information shall be designated as Confidential, Export Controlled Information, or
16 Attorney's Eyes Only Information by the Party as soon as reasonably possible after
17 the Party becomes aware of the disclosure and such information shall thereafter be
18 treated as Confidential, Export Controlled Information, or Attorney's Eyes Only
19 Information subject to this Protective Order. No liability shall attach to any Party's
20 disclosure of such information from the time of receipt of the information until

1 such time as the Party properly designates it as Confidential, Export Controlled
2 Information, or Attorney's Eyes Only Information.

3 14. Inadvertent Disclosure of Privileged Documents or Information.

4 14.1. Inadvertently Produced Document. For purposes of paragraph
5 14 of this Protective Order, an "Inadvertently Produced Document" is a document
6 produced to a Party in this litigation that could have been withheld, in whole or in
7 part, based on a legitimate claim of attorney-client privilege, work-product
8 protection, or other applicable privilege.

9 14.2. No Waiver of Privileges or Rights. Inclusion of any
10 Inadvertently Produced Document in a production shall not result in the waiver of
11 any privilege or protection associated with such document, nor result in a subject
12 matter waiver of any kind.

13 14.3. Notice of Inadvertently Produced Document. A producing
14 Party may demand the return of any Inadvertently Produced Document, which
15 demand shall be made to the receiving Party's counsel in writing and shall contain
16 information sufficient to identify the Inadvertently Produced Document. In
17 addition, a Party which determines that it may have received an Inadvertently
18 Produced Document shall immediately notify the producing Party of the
19 inadvertent disclosure. The producing Party may then provide notice of the
20 inadvertent disclosure to the receiving Party.

1 14.4. Response to Inadvertently Produced Document. Upon receipt
2 of a written demand for return of an Inadvertently Produced Document, the
3 receiving Party shall immediately return the Inadvertently Produced Document
4 (and any copies thereof) to the producing Party and shall immediately delete all
5 electronic versions of the document and all notes or other work product reflecting
6 the contents of such material. The Parties agree that no copies shall be made of the
7 Inadvertently Produced Documents.

8 14.5. Objection to Designation. The receiving Party may object to
9 the producing Party's designation of an Inadvertently Produced Document by
10 providing written notice of such objection within 5 business days of its receipt of a
11 written demand for the return of an Inadvertently Produced Document. The Parties
12 shall confer within 10 days after the date of such objection in an attempt to resolve
13 their differences, unless the Parties agree to a longer time. If the Parties are unable
14 to resolve their differences, the objecting Party shall have 21 days after the
15 conference concludes to file with the Court a motion. Any such motion shall be
16 resolved by the Court after an in camera review of the Inadvertently Produced
17 Document. Pending resolution of the matter by the Court, the Parties shall not use
18 any documents that are claimed to be Inadvertently Produced Documents in this
19 litigation.
20

1 15. Parties' Own Documents. This Protective Order shall in no way
2 restrict the Parties in their use of their own documents and information, and
3 nothing in this Order shall preclude any Party from voluntarily disclosing its own
4 documents or information.

5 16. Motion to Compel Production of Confidential, Export Controlled
6 Information, or Attorney's Eyes Only Information. If any third-party moves to
7 compel a Party to this action to produce any Confidential, Export Controlled
8 Information, or Attorney's Eyes Only Information, such Party shall immediately
9 notify the Parties who originally produced and/or designated such Confidential,
10 Export Controlled Information, or Attorney's Eyes Only Information that a motion
11 has been made in order to allow the Parties who originally produced and/or
12 designated such Confidential, Export Controlled Information, or Attorney's Eyes
13 Only Information the opportunity to oppose the motion. In addition, if a Party is
14 ordered to produce Confidential, Export Controlled Information, or Attorney's
15 Eyes Only Information covered by this Protective Order, notice and, if available, a
16 copy of the order compelling disclosure shall immediately be given the Parties who
17 originally produced and/or designated such Confidential, Export Controlled
18 Information, or Attorney's Eyes Only Information. Nothing in this Agreed
19 Confidentiality and Protective Order shall be construed as requiring the Party who
20 is ordered to produce such Confidential, Export Controlled Information, or

1 Attorney's Eyes Only Information to challenge or appeal any order requiring the
2 production of such Confidential, Export Controlled Information, or Attorney's
3 Eyes Only Information or to subject himself/herself to any penalty for non-
4 compliance with any legal process or seek any relief from the Court.

5 17. No Effect on Other Rights. This Order shall in no way abrogate or
6 diminish any pre-existing contractual, statutory, or other legal obligations or rights
7 of any Party with respect to Confidential, Export Controlled Information, or
8 Attorney's Eyes Only Information.

9 18. Modification. In the event any Party hereto seeks a Court order to
10 modify the terms of this Order, said Party shall make such request by written
11 stipulation or noticed motion to all Parties that must be served and filed in
12 accordance with local court rules.

13 19. Handling upon Conclusion of Litigation. All Parties, counsel, and
14 persons to whom disclosure was made are ordered to return all Confidential,
15 Export Controlled Information, or Attorney's Eyes Only Information to the
16 designating Party within 90 days of the conclusion of litigation. In addition,
17 counsel shall certify in writing that all such Confidential, Export Controlled
18 Information, or Attorney's Eyes Only Information has been returned. Counsel for
19 each Party also shall contact each person to whom that Party has provided a copy
20 of any Confidential, Export Controlled Information, or Attorney's Eyes Only

Information and request the documents be returned. In lieu of returning Confidential, Export Controlled Information, or Attorney's Eyes Only Information, the person or Party in possession of such Confidential, Export Controlled Information, or Attorney's Eyes Only Information may elect to destroy it. If the person or Party in possession of Confidential, Export Controlled Information, or Attorney's Eyes Only Information elects to destroy it rather than return it, that person or Party must notify the designating Party in writing of the destruction of the Confidential, Export Controlled Information, or Attorney's Eyes Only Information within 90 days of the conclusion of litigation.

IT IS SO ORDERED.

The District Court Executive is hereby directed to enter this Order and provide copies to counsel.

DATED June 6, 2014.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge